

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

EXPLORICA, INC.

Plaintiff,

v.

ELDERHOSTEL, INC.
d/b/a EXPLORITAS,

Defendant.

Civil Action No. 09-11719-RGS

**DECLARATION OF ARTHUR FROMMER IN OPPOSITION TO EXPLORICA'S
MOTION FOR A PRELIMINARY INJUNCTION**

I, Arthur Frommer, declare as follows:

1. I am the founder of the Frommer's travel guidebook series. I have worked in the field of travel for the past fifty-two years, in virtually every capacity from traveler to travel guidebook writer, editor, publisher, tour operator, hotelier, travel services consumer and provider, consultant, and radio, television and Internet commentator. I have been referred to as America's foremost authority on travel.

2. Prior to my career in travel I was an attorney. I graduated from Yale Law School and worked at Paul, Weiss, Rifkind, Wharton & Garrison before leaving to found Arthur Frommer International, Inc.

3. Since 1955 I have written dozens of travel guidebooks that have sold millions of copies all over the world including *The GI's Guide to Traveling in Europe*, *Europe on \$5 a Day*, *The New World of Travel*, *Ask Arthur Frommer & travel better, cheaper, smarter* and many others. I also founded *Budget Travel* magazine which continues in monthly publication.

4. My Frommer's travel guidebook series has expanded to over 350 yearly travel guidebooks across 14 series with over 75 million books sold. It is, as best I know, North America's largest selling series of travel books.

5. Nearly one out of every four travel guidebooks purchased in the United States every year is a Frommer's guidebook.

6. I host "The Travel Show" on WOR 710 in New York which is syndicated to over 100 radio stations across the U.S.

7. I write a twice weekly column on travel that appears in over 30 newspapers across the U.S. and write about travel on my weblog www.frommers.com/blog.

8. I lecture to travel audiences worldwide.

9. I have been featured as a travel expert on CNN, CNBC, the NBC Today Show, the Oprah Winfrey Show, and the Regis and Kathy Lee show.

10. In addition to being a travel writer and consultant, I have also been a tour operator and hotelier. In 1961 I founded \$5-a-Day Tours, Inc., which later became Arthur Frommer International, Inc. In 1969, in partnership with KLM Royal Dutch Airlines, I built my first hotel in Amsterdam. The hotel is now part of the Accor group and is known as the Hotel Mercure Amsterdam Arthur Frommer. I was also a founding director of the United States Tour Operators Association and served on its Board of Directors.

11. In 1998 I was elected to a three-year term to the board of directors of Elderhostel. I only attended one meeting, on September 3, 1998. I was not paid for my time on the board of Elderhostel. I am not being paid or otherwise compensated in any way for my time or testimony in this case. I do not have any ownership or other stake in Elderhostel.

12. I have been familiar with Elderhostel's programs for many years. Elderhostel – now known as Exploritas – is the world's largest not-for-profit educational travel organization for older adults. Over 100,000 people enroll in its programs every year. Elderhostel has always been, and continues to be, a program created for, and attractive to older, primarily retired, adults.

13. Travel companies often focus on one specific demographic so that they can best address the needs of that demographic. As a result, companies that focus on one demographic generally do not compete with companies that focus on a different demographic.

14. The older adult travel market is significantly different and distinct from the student travel market. Older travelers, such as those serviced by Elderhostel, typically seek a very different travel experience than younger travelers – in particular one that is less physically demanding and more intellectually stimulating – when compared to youth travel services (even ones that are marketed to students). Moreover, it is not accurate to lump both entities under the heading of "travel companies" at all, since Elderhostel, although providing a travel dimension to some of its programs, is focused on delivering educational programs to its participants rather than to acting as a travel (let alone student or teen travel) agency.

15. Student travel is a different market than older adult educational travel services. A company engaged in the student travel business competes head-to-head with others in the student travel business, but does not compete with companies providing older adult educational travel programs. Typically, student travel companies may not even encounter, in the ordinary course of their business, the companies that serve older travelers.

16. Similarly, there is no overlap in the markets for student travel and older adult travel. Teenage students do not typically wish to travel with unrelated older adult retirees. Likewise, older adults generally do not wish to travel or study with unrelated teenagers.

17. Travel is not an impulse purchase. Far from it. Travelers typically research and investigate their travel plans six months or more in advance, sometimes as much as a year or more, and spend a considerable amount of their family budgets. Accordingly, they are very careful about whom they select to do business with, and are unlikely to be confused about which entity is serving their travel needs even when there is some superficial similarity in the names. Prior to booking a tour or other travel experience, a purchaser of travel services often considers a wide variety of factors including price, dates, location, tour content, makeup of fellow travelers, level of accommodation, availability of emergency services, or security, and often seeks input, guidance, or approval from family members, travel agents, and other respected third parties.

18. The purchasers of student travel and of older adult travel or education programs are very different categories of people. Student travel businesses such as Explorica focus on and market to student groups that are led by a teacher or administrator, who may then travel for free as a chaperone. In booking travel for these groups, a school board or parent group must typically approve the trip and is often the ultimate decision-maker when it comes to booking. This vetting process is typically careful and deliberate, and is not one made in haste or in which a decision might be made simply on the basis of a misunderstanding of the name of the service provider.

19. For older adult educational programs such as those provided by Elderhostel, the purchasing decision is typically made by the participants themselves, even if the ultimate program may be with a group. Considering the cost and selection opportunities available, this purchasing decision is also typically made with care as explained above.

20. The additional services offered to student travelers by companies like Explorica, versus those offered to adult participants in Elderhostel's educational programs, are also very different. Student travel companies like Explorica may offer services enabling parents to

regularly communicate with their touring children, or even monitor their tour's progress. Older adult educational organizations, such as Elderhostel, offer add-on services targeted at the needs and interests of seniors, such as a seven-level grading system to determine the level of physical activity required in a particular program.

21. If a purchaser of student travel services were to look at an Elderhostel catalog, he or she would know right away that Elderhostel was an educational program for older adults, not high school students. Elderhostel's materials are filled with photographs of individuals in their 60s, 70s and 80s, as well as with items about "older adults," "Baby Boomers," activities at "a participant's individual pace and level," "lifelong learning," "healthy aging," and similar language.

22. By contrast, if a purchaser of older adult education or travel services were to look at an Explorica brochure, he or she would know right away that Explorica was a travel service for high school students, not older adults. Explorica's materials are filled with photographs of teenagers (sometimes in humorous poses), contain sections dedicated to teachers and parents, and describe "tours for students," "student groups," "parents can follow your tour's progress," "chaperones," and "student safety" and other issues relevant to teenagers.

23. There is no likelihood of confusion between Exploritas and Explorica. "Explore" is a common word or prefix in the travel industry, associated with a wide variety of services. The overall term EXPLORITAS combines the concept of exploration with the educational term "veritas," meaning "truth," and associated with higher education. That term is sufficiently different from the term EXPLORICA that it is highly unlikely to result in any confusion regarding the source or origin of services provided – particularly given the distinct demographics and nature of services provided by the two parties.

24. Even setting aside the specific names, a purchaser of student travel services simply would not accidentally book travel with an older adult education and travel services company thinking it was purchasing from a student travel agency. Put more specifically, no one would purchase a program from Elderhostel thinking it was getting a tour from Explorica.

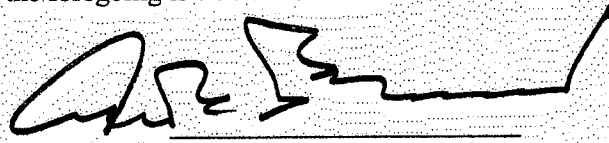
25. I understand that at approximately the same time that Elderhostel changed its name to Exploritas, it also removed the age limit of 55 years from the majority of its tours. Elderhostel's target customer, however, remains exactly the same: the older adult traveler. While there may be instances in which an older traveler seeks to be accompanied by someone under 55 (e.g. an adult daughter or son), and Exploritas has appropriately accommodated that situation in its revised guidelines, that change in policy will not in my opinion result in any likelihood of confusion between the two companies or their services. It remains the case that teachers or high-school students seeking out a travel abroad experience simply will not seek out Elderhostel/Exploritas for those services, and would not be provided with such services even if they did happen across Elderhostel somehow, since is not now and has never been within Elderhostel's business model to organize high school student tours. Moreover, from my extensive knowledge and experience in the travel industry, it is clear that a company whose average participant age is 73 will not be sought out by teenagers or high school teachers as a provider of educational travel services.

26. As a small part of its business, Elderhostel also offers a program of intergenerational programs geared toward grandparents and their younger grandchildren. Again, no one seeking to purchase a student tour from Explorica would be confused and accidentally purchase one of Elderhostel's intergenerational tours.

27. I understand that Explorica is alleging that in one instance a vendor accidentally faxed a form to Elderhostel instead of Explorica. My understanding is that Elderhostel is not aware that any such incident actually occurred. But even if it had, misplaced faxes or communications happen all the time in the travel industry and occasional misdirected items would not in my view substantially harm Explorica's business nor (even if true) would it suggest to me as an expert in the travel industry that any substantial confusion was occurring or is likely to occur between these two entities as a result of their respective names or marks.

I declare under penalty of perjury that the foregoing is true and correct:

November 23, 2009
Date


Arthur Frommer

CERTIFICATE OF SERVICE

I certify that this document is being filed through the Court's electronic filing system, which serves counsel for other parties who are registered participants as identified on the Notice of Electronic Filing (NEF). Any counsel for other parties who are not registered participants are being served by first class mail on the date of electronic filing.

/s/ Michael A. Albert